

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**MARVIN BAKER,**

**Defendant.**

**CASE NO. 8:06CR4**

## TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 50) and motion for downward departure. The government has adopted the PSR. (Filing No. 49.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

## Objections

The Defendant objects to ¶¶ 52 and 53, arguing that they should be treated as related offenses for purposes of U.S.S.G. § 4A1.2. The relevant application note provides: “Prior sentences are not considered related if they were for offenses that were separated by an intervening arrest (*i.e.*, the defendant is arrested for the first offense prior to committing the second offense).” The narrative portion of ¶ 53 states that the offenses occurred on the same day yet were separate incidents having separate police reports and court docket numbers. Therefore, the offenses are not “related” because they were separated by an intervening arrest for the first offense. The objection is denied.

***Downward Departure***

The Defendant's motion for downward departure, based on alleged overrepresentation of criminal history, will be heard at sentencing.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 50) are denied;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;
5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and
6. The Defendant's motion for downward departure will be heard at sentencing.

DATED this 21<sup>st</sup> day of September, 2006.

BY THE COURT:

S/ Laurie Smith Camp  
United States District Judge